



**THOMSON REUTERS**

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**VIA ELECTRONIC FILING**

Ms. Melissa Jurgens  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

RE: Concept Release on Risk Controls and System Safeguards for Automated Trading Environments - RIN 3038-AD52

Thomson Reuters welcomes the invitation to submit comments to the Commodity Futures Trading Commission ("CFTC") on the Concept Release on Risk System Safeguards for Automated Trading Environments, published September 12, 2013. Thomson Reuters supports the CFTC's ongoing efforts to protect the financial system and increase transparency to market participants.

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**Comments**

We have confined our response to one particular area – the arrangements for the release of governmental and non-governmental economic reports referenced in paragraphs 73-77 of the Concept Release.

Thomson Reuters has considerable experience in this area, as a global news agency/reporter and as a creator/sponsor of economic reports and news. The concept release cites the example of the University of Michigan Consumer Sentiment Index, of which Thomson Reuters is a sponsor, as a "non-governmental economic report", the release arrangements for which have attracted media and industry comment in the last few months. The sentiment that appears to underpin negative commentary in this area seems to be that the time or speed of delivery at which any data to which



markets might be sensitive should be regulated so that all actual or potential users can receive such data at the same time. We feel strongly that:

- a) applied to non-governmental data, such a notion fundamentally compromises the intellectual property of private individuals and enterprises and curtails their freedom to invest in the creation of such data, leading to a reduction in innovation and competition, and
- b) in any event, any alternative to the current arrangements in which it becomes necessary to define and identify what makes information “market moving” at any point in time is impracticable and, of itself, a disincentive to private enterprise.

The remainder of our response deals with the specific questions posed in paragraph 77 of the Concept Release.

### Question 1

#### **To what extent can potentially market moving data from non-governmental economic reports be obtained prior to its public release for a fee?**

Non-governmental research and reports are, by definition, produced and created by private individuals and companies, often through the expenditure of tremendous resources and intellectual capital. The research and reports can take many different forms. Often they are predictions about future economic activity, based on surveys of the opinions, expectations or experience of different groups whose actions can influence the economy. At times they are based on research in a particular sector. Other non governmental reports are in the form of backward looking facts, measuring how different sectors of the economy performed during a certain time period. Regardless of the form of the non-government report, they all have one thing in common. They are the result of the capital and efforts of private individuals or companies. They are the valuable intellectual property of their creators.

There have been in the past and continue to be examples of such potentially market moving private research being provided to limited constituencies for a fee. This is, in fact, the *raison d'être* of financial markets research and reports, whether it is stock specific, sector oriented, related to national or global economic issues: providing research insight and reports to clients to help them make money on the basis that they pay directly or indirectly to receive it on an exclusive basis either for a period or in perpetuity (i.e. such research is never publicly available). Such research and reports may be potentially market moving.

Private research and reports are created because users of those reports perceive potential value and are willing to pay, directly or otherwise, for the information. Those users are also willing to take risks associated with investment decisions based on the information. Moreover the owners



and sponsors of these private reports invest in their creation, development and maintenance, and bear the risk of failure to realize a return on that investment.

Consider the perverse set of incentives or disincentives that would result if creators of non-governmental reports (market moving or not) were required to release such data to all actual and potential users at the same time (i.e. publicly). Today, a creator of these reports is incentivized to produce reports that are valuable to its recipients with the expectation of recouping their costs. If government mandated that such reports should be available to all at the same time, then the ability of the creator to charge for access to their intellectual property in order to recoup such cost falls away, creating a disincentive to producing the information in the first place. By the same token, inability to charge not just to cover cost, but also to create a margin would stifle innovation, creativity and competition between providers of research, to the detriment of all market users.

Adopting controlled release arrangements for private research and reports which are akin to those for governmental economic reports will therefore either *result in* the cessation of the research activity to which the new arrangements are extended (because the economics no longer work) or require that the research becomes government funded. Neither would appear to be in the public interest.

We further note that the regulation of the free flow of information poses serious First Amendment challenges. As discussed below, it is not possible to define “market-moving data” in a way that is practically useful in this context. Such a subjective and vague test cannot be used to impose a prior restraint on speech by non-governmental entities.

## Question 2

**Are there specific reports or types of reports for which early disclosure should be permitted?**

Yes, we believe that early disclosure must be permitted for all non-government reports.

## Question 3

**What process should be used for identifying non-governmental economic reports whose early release should not be permitted?**

For the reasons outlined above, there is no need for such a process as, by definition, no release restrictions should apply to privately created and owned data.

This very question illustrates yet another challenge in regulating the release of non-governmental reports. Whether a report should be regulated or not would depend on the extent to which it is potentially market moving. Who determines when a report will move or has potential to move the market in a significant enough manner to warrant regulation?



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A report may not significantly move the market when first created, or may not move the market at all, but may have greater potential to move the market over time. With the status of a report potentially changing over time, why would anyone make the investment to produce a new report or conduct new research? It will be extremely difficult to provide people with any degree of clarity as to when their research or reports may effectively be taken by government fiat.

**Question 4**

**Should the data release process for such reports be similar to the data lock-up process for government economic data?**

For the reasons stated above, we feel most strongly the release process for non-governmental research and reports should not, as a matter of principle, be the same as the process for governmental reports. The notion of government regulation of the free flow of information between and among private entities is radically different than the government exercising control over the publication of governmental data.

Thomson Reuters looks forward to working with the CFTC on this issue.

Sincerely,

Darren B. Pocsik  
General Counsel, Financial & Risk  
Thomson Reuters